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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,693	12/02/2003	Toshihiro Hayami	246076US2SP	1975
22850	7590	09/24/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
KACKAR, RAM N				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
09/24/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary

Application No.

10/724,693

Applicant(s)

HAYAMI ET AL.

Examiner

Ram N. Kackar

Art Unit

1792

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5, 8-13 and 18-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5, 8-13, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI-108)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 3-5, 8-13 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants admitted prior art (AAPA) in view of Tamagawa et al (JP 03072624) and Craig A. Phelps (US 5724234) and further in view of Hannigan et al (US 5999081) as evidenced by (Article in Publication, Sensors handbook by Sabrie Soloman - Copy right 1999), Shimamura et al (US 5707500) and Lewis et al (US 6107001).**

AAPA discloses a method of temperature measurement of a susceptor disposed in a conductive vessel of anodized aluminum set to ground potential and having a space formed therein in which a plasma is generated by application of a radio frequency power which in recent years have gone in frequency to 40 MHz, 60 MHz or 100 Mhz.

AAPA do not disclose the measurement of temperature of the susceptor by a radiation thermometer using infrared rays. However measuring temperature by an infrared thermometer is common.

Tamagawa et al disclose temperature measurement of a sample in a plasma etching chamber (Fig 1) by an infrared thermometer (262) looking through a partially drilled hole (25) in the electrostatic chuck to sense the temperature of the chuck and another sensor (162) through a

through hole (15). Further, the infrared thermometer is installed so as to close the opening of the hole (18 or 28).

Therefore it would have been obvious for one of ordinary skill in the art at the time of invention to use infrared thermometer for its accurate and reliable measurement of temperature.

AAPA as modified by Tamagawa et al do not disclose any limitation on the size of the opening. However it is inherent that an opening made in the AAPA to allow an infrared radiation to pass also allows the possibility of RF leak.

Craig A. Phelps teaches that RF power leaks through openings of a size greater than the wavelength of the radio frequency and the leakage decreases linearly as the size of the opening decreases (Col 1 lines 60- Col 2 line 8). Craig A. Phelps further teaches that the opening should be less than $1/20$ of the wavelength.

It would be obvious therefore that at higher frequency the leak of an opening would increase and therefore at higher frequency smaller and smaller opening (less than $1/50$ of the wavelength) will be preferable to prevent RF leak.

Therefore it would have been obvious for one of ordinary skill in the art at the time of invention to use opening of as small a size as feasible in order to prevent RF leak through the opening.

Applicants admitted prior art (AAPA) in view of Tamagawa et al and Craig A. Phelps as discussed above do not disclose that the measuring portion of the susceptor is structured as a blackbody, which is anodized.

Advantage of a black body for infrared temperature measurement are well known as evidenced by (Article in Publication, Sensors handbook by Sabrie Soloman -Copy right 1999)

and Shimamura et al. It is known through basic understanding of radiation thermometry that the infrared radiation energy emitted from heated surface is proportional to the emissivity of the surface and to T^4 where T is the temperature. Since emissivity of a black body is 1 it is obvious that signal for temperature measurement will have a better signal/noise ratio for a black body (See Article 84 specially 84.4). Same teaching is echoed by Shimamura et al (Col 19 lines 34 to Col 20 line 65) who teach the use of making the inside of shielding cylinder as blackbody to reduce stray light (black body absorbs and does not reflect light).

Hannigan et al teach that blackbody surface could be achieved by anodized aluminum (Col 5 lines 1-9).

Regarding the limitation of “anodized to be a sulfuric acid hard anodized aluminum so as to act as a blackbody to the infrared ray” it is noted that this is a product by process claim.

Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production.

If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

However, anodizing by sulfuric acid is known for black body fabrication (See for example Lewis et al –Col 7 line 46-Col 8 line2).

Therefore it would have been obvious for one of ordinary skill in the art at the time of invention to use anodized surface as blackbody especially since the process vessel was constituted of anodized aluminum.

Response to Arguments

Applicant's arguments filed 7/2/2008 have been fully considered but they are not persuasive.

Applicant's arguments regarding sulfuric acid hard anodized aluminum are addressed in the rejection as above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ram N. Kackar whose telephone number is 571 272 1436. The examiner can normally be reached on M-F 8:00 A.M to 5:P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on 571 272 1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ram N Kackar/
Primary Examiner, Art Unit 1792